FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 864

EDWARD KWIEK,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

Petition for Writ of Certiorari

CHARLES A. BELLOWS
10 South La Salle Street
Chicago 3, Illinois
Attorney for Petitioner

JASON ERNEST BELLOWS
SHERMAN C. MAGIDSON
Chicago, Illinois
On the Brief

UNITED STATE... LAW PRINTING CO., CHICAGO 13, ILL. LA Review 5-6581

INDEX.

	PAGE
Opinion of the Court Below	1
Statement of Jurisdiction	1
Question Presented	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Granting Writ	15
Conclusion	20
Appendix I (Opinion of the Supreme Court of Illinois)	21
Appendix II (Extract from Additional Abstract filed in the Supreme Court of Illinois.)	24

LIST OF AUTHORITIES

Cases

Lunce v. Overlade, 7 Cir., 1957, 244 F. 2d 108	19
Napue v. Illinois, 360 U.S. 264	18

Constitutional Provisions

United States Constitution, Amendment XIV	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

EDWARD KWIEK,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

Petition for Writ of Certiorari

Opinion of the Court Below

The opinion of the Supreme Court of Illinois is reported at 18 Ill. 2d 121, 163 N.E. 2d 474. (See Appendix I, page 21 *infra*.)

Statement of Jurisdiction

The judgment of the Supreme Court of Illinois was entered on November 18, 1959; a timely petition for rehearing was denied January 18, 1960.

The statutory provision believed to confer upon this court, jurisdiction to review the judgment in question by writ of certiorari is Title 28, United States Code, Section 1257(3).

Question Presented

Whether the quality of representation afforded to the petitioner upon his trial in the Criminal Court of Cook County, Illinois, by his then counsel was of such a nature as to constitute a denial of due process of law; and whether the State's reliance upon a low quality of representation by counsel to obtain a conviction is a denial of due process of law.

Constitutional Provision Involved

Constitution of the United States
Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case.

The petitioner hereinafter referred to as the defendant was indicted with others by the Grand Jury of Cook County for the crime of robbery while armed with a dangerous weapon. (Abst. 1, 2) He thereafter retained as his counsel, one A. Jefferson Schultze, a member of the Bar of Illinois (Abst. 27) The defendant Kwiek, although he had entered a plea of not guilty when first arraigned for a plea on the indictment, later withdrew this plea of not guilty and entered a plea of guilty. Thereupon his counsel moved for his release on probation and the trial court allowed the defendant to apply for probation and ordered that a presentence investigation be made by the Cook County Probation Department.

A hearing was held on the application for probation and because of its importance to this case we here set forth the proceedings had at that time: (Abst. 13, 14, 15, 16, 17, 18)

> "Mr. Reibman: Judge, as I understand this matter, previously this was before your Honor on the 12th of August, 1958, at which time the four defendants named here, except for Ramos, which was s.o.l'd, entered a plea of guilty. The defendant, Kolodziejski, has heretofore been sentenced by your Honor, and the other three cases were continued with applications for probation, which I think your Honor now has before you, the investigations.
>
> • • •
>
> The Court: Do you want to open all these, or take them one at a time?

Mr. Reibman: At your pleasure. I might say, this was a robbery of a dairy, and the complaining witness, Mr. Robinson, is here, who is one of the co-partners of the dairy. This is Mr. Robinson. If you remember the facts, Judge, Ramos, who was disposed of in another court room, and Secor and Kolodziejski, pleaded guilty to the indictment and the facts were that they actually participated in and had the guns during the course of the robbery of Mr. Robinson. And the other two defendants, if I recollect the evidence—and the police will correct me, as well as Mr. Robinson—were former employees of the dairy.

The Court: Which was the employee?

Mr. Reibman: Kwiek was the employee and Allivato was a friend of his, and they, according to the evidence, helped in the setting up of this plan to commit the robbery, but did not actually go in with guns to commit the robbery. Is that right, Officer?

The Court: They were on the outside.

Mr. Schultze: They were never anywhere near the scene of the robbery, they didn't know any robbery was going to be committed, they didn't believe there was going to be one committed, they furnished no guns or anything, or any outline of a plan.

The Court: They pleaded guilty already.

Mr. Schultze: As being accessories. I would like to bring out the exact facts.

The Court: There has been a plea of guilty and they have thrown themselves on the mercy of the Court. I want them to come clean. If they didn't commit a robbery, they shouldn't have pleaded guilty. They pleaded guilty.

The Court: I believe we have looked at these probation reports now. Does the State have any evidence in aggravation, other than what is reflected in these reports?

Mr. Reibman: Judge, I think the facts your Honor previously heard by stipulation, together with the probation reports and the records contained therein, I think give your Honor all the State could in aggravation and we will stand on the probation reports and the facts of the case.

* * *

Mr. Schultze: As to Edward Kwiek—

The Court: Mr. Schultze.

Mr. Schultze: As to Edward Kwiek,—

The Court: Speak up, Mr. Schultze, please.

Mr. Schultze: Yes. Edward Kwiek has a spotless record. He has never been in any trouble before. He has had a very good work record for nearly twenty years for Robinson, the complaining witness. He is a home owner. He has bought himself a little home in Riverside, Illinois, and he also has a wonderful war record. He has been in the army and across in Europe. He has merited bronze battle stars, four overseas service bars, victory medal, good conduct medal. In the Asiatic Pacific theater received two ribbons and, of course, an honorable discharge.

And Edward Kwiek explained to me that he never had any idea that any robbery would be committed. He had given them some information carelessly in a tavern, and that was his sin, if he just talked a little too much. He was never anywhere near the scene of the crime. He didn't give them any plans, any written or geographical plans, did not go with them, did not show them anything, did not furnish them with any